

# Exhibit 1

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October 4, 2016

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Re: **Alton Harding v. Macys West Stores, Inc.**

Dear Mr. Zelner:

Please let this letter serve as our response to your correspondence dated September 30, 2016.

Let me make this clear, at no point did we ever agree to produce responses pursuant to your overly broad scope solely on the condition of a stipulation for protective order. Since the outset of our meet and confer conversations, our position was, is, and remains that protective order was contingent upon the parties coming to an agreement as to a reasonable scope. Any assertion to the contrary is a deliberate misrepresentation and manipulation of our conversations.

Clearly, from the multitude of correspondence we have exchanged, we have been unable to come to an agreement as this to scope. I have attempted to have several meaningful conversations with you to come to an mutually agreed upon scope as to geography and time. However, you have blatantly and profusely refused to limit your scope in any capacity or participate in any meaningful discussion to explain and support your position. Defendant, in conducted a search and provided information related to the subject store, which revealed no prior

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claims similar to Plaintiff's for a five year period prior to the purported incident in a good faith attempt to participate in discovery and avoid unnecessary motion practice.

Moreover, with regards to your scope, I have asked you for a meaningful showing of relevancy on multiple occasions as to how a nationwide scope of fifteen (15) years is relevant to your client's allegations. To date, it appears that your showing of relevancy to support your incredibly over broad, unduly burdensome and harassing scope is: 1) Your belief as to a single purported claim in New York State and 2) your client's US Citizenship. I will not ask my client to bear the excessive burden and cost scour its archives, of approximately 1000 open and closed, and/or non-operational stores over a fifteen (15) year period, nationwide on this basis.

On September 29, 2016, you finally provided a definition as to "Racial Profiling." Per your definition "Racial Profiling" is *'any incident in which someone was treated differently in any manner based on their race.'* Despite my inquiry for further clarification as to whether you mean similar instances to your client's allegations, you maintain that your scope is *'anything'* and have refused to further define the subject underlying conduct or define the nature of persons that experienced the purported conduct. Interrogatories must be definite, clear, narrowly tailored for the case, and adequately advise the interrogated party what information is being sought. See, *Roberts v. Heim* (ND Cal 1989) 130 FRD 424, 427. It is not Responding Party's responsibility to guess at what you define this term to be. Accordingly, this term is still vague, ambiguous, and overly broad with regards to your clients narrow purported allegations in relation to loss prevention.

Once again, I refer you to Federal Rule of Civ. Pro §26(b)(1), which states that only matters that are **relevant** to a party's claims or defenses, and proportional to the needs of the case are discoverable. If you cannot articulate a showing of relevancy and proportionality, or provide any legal basis to support your position to me, how will you be able to support your motion to the court?

Finally, **at no time have we ever agreed to stay any parties deposition until you are in receipt of the disputed discovery responses.** This is a complete and utter fabrication on your part. Perhaps you had this conversation with yourself. Moreover, other claims of purported "racial profiling" have no bearing on your clients ability to testify about his own experiences and his own personal knowledge.

This is our **fourth** notice of your clients deposition, following notices for June 12, 2016, July 29, 2016, and September 27, 2016. Furthermore, our office spent countless hours over a period of the last three months to set a mutually agreeable date. You have refused to provide dates and continue to give us the run around. We will not take the November 2, 2013 noticed motion off calendar unless a mutually agreed date is reached by October 7, 2016, as I detailed in my letter dated September 23, 2016. In fact, that date was noticed in good faith based upon assertions from your associate, Mr. Fonorow, that that date was available for you. If your client fails to appear, we will take a Certificate of non-appearance and move to compel his depositions.

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Your deliberate withholding of your clients deposition amounts to extortion and we intend to seek all appropriate sanctions for your bad faith conduct.

Moving forward, please stop misrepresenting our conversations. As it appears that you are fabricating agreements and conversations that never occurred, I request that all meet and confer be in writing.

We have exhausted all meet and confer attempts, send any proposed joint motion to our office in word format in order for Defendant to prepare any necessary response.

Very truly yours,

**MANNING & KASS**  
**ELLROD, RAMIREZ, TRESTER LLP**



Marcia E. Cook, Esq.

**\*\* TRANSMISSION REPORT \*\***

SID : MKERT LLP1

Number L1 :  
Number L2 :

Date : 10-05-16 13:12

Date/Time	10-05 13:11
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Status	Correct

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October 5, 2016

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FROM: Marcia E. Cook, Esq.  
 RE: *Alton Harding v. Macy's*  
 CLIENT/MATTER NO.: 384-051268 USER ID: 5562  
 PAGES: 4 (including cover page)  
 MESSAGE: *Please see attached correspondence of this date.*

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